

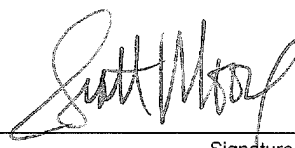
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		5577-351	
I hereby certify that this correspondence is being transmitted electronically to the U.S. Patent and Trademark Office		Application Number	Filed
on <u>April 4, 2007</u>		10/007,582	12/05/2001
Signature <u><i>Amelia Tauchen</i></u>		First Named Inventor	
Typed or printed name <u>Amelia Tauchen</u>		Roy F. Brabson	
		Art Unit	Examiner
		2135	Joseph T. Pan
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		D. Scott Moore	
<input checked="" type="checkbox"/> attorney or agent of record. <u>42,011</u>		919-854-1400	
Registration number		Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.		April 4, 2007	
Registration number if acting under 37 CFR 1.34		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE EXAMINING GROUP 2135**

Attorney Docket No. RSW920010222US1 (5577-351)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Brabson et al.

Serial No.: 10/007,582

Filed: December 5, 2001

For: OFFLOAD PROCESSING FOR SECURE DATA TRANSFER

Confirmation No.: 3561

Examiner: Joseph T. Pan

Group Art Unit: 2135

Date: April 4, 2007

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Commissioner for Patents

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CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on April 4, 2007.

Signature: _____

Amelia Tauchen

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to IBM's Deposit Account No. 09-0461.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed January 4, 2007 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Applicants respectfully submit that many of the recitations of the pending claims are not met by the cited reference for at least the reasons discussed herein and in Applicants' previously filed Request For Reconsideration of September 21, 2006. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1, 12, and 13, and dependent Claims 8 - 11 and 17. Applicants further submit that the rejection of all pending claims under 35 U.S.C. § 112, first paragraph is erroneous for at least the reasons discussed below.

The 35 U.S.C. § 102 Rejection

Independent Claims 1, 12, and 13 stand rejected under 35 U.S.C. §102(e) as being anticipated by U. S. Patent No. 6,370,599 to Anand et al. (hereinafter "Anand"). (Final Action, page 2). Independent Claims 1, 12, and 13 are directed to a method, a system, and a computer program product for improving security processing in a computing network in which a security offload component is used. In particular, these three claims describe the security offload component as being in the operating system kernel. For example, independent Claim 1 recites:

providing a security offload component in an operating system kernel
which performs security processing;
providing control functions in the operating system kernel for directing
operation of the security offload component;
providing an application program;
executing the application program; and
executing the provided control functions during execution of the
application program, thereby selectably directing the security offload component

to secure at least one communication of the executing application program.
(Emphasis added.)

Claims 12 and 13 include similar recitations. Support for providing the security offload component as part of the operating system kernel is provided, for example, at page 11, lines 13 - 19 of the Specification. Specifically, the Specification states:

The present invention moves security processing (or control thereof) for security protocols such as SSL and TLS (which are connection-oriented protocols) into the kernel. In several embodiments, the security processing is performed in the TCP layer. (Specification, page 11, lines 13 - 15; emphasis added).

The Office Action cites FIG. 2 and various passages from the Abstract and Summary sections of Anand as disclosing the recitations of independent Claims 1, 12, and 13. (Final Action, pages 2 - 5). Applicants respectfully submit, however, that the Final Action appears to have misinterpreted the teachings of Anand. As highlighted above, independent Claims 1, 12, and 13 include recitations directed to providing a security offload component in an operating system kernel. That is, the security offload component is provided as part of the operating system kernel software. In sharp contrast, Anand is directed to moving tasks that are typically performed in software to a hardware component. (Anand, col. 1, lines 20 - 27). Anand explains this goal of moving tasks from software to hardware in more detail as follows:

Embodiments of the present invention are directed to providing the ability to reducing the processing overhead and memory usage of a processing unit 21. This is accomplished by offloading particular computing tasks, which are accomplished for instance by way of an operating system, application programs and/or other program modules that are executing on the processing unit/CPU 21, to an appropriate peripheral hardware device connected to the computer system 20. (Anand, col. 7, lines 47 - 55; emphasis added).

Rather than move a security offload component into the kernel of the operating system as recited in Claims 1, 12, and 13, Anand specifically contemplates moving tasks performed by operating system software to a peripheral hardware device in the passage reproduced above. With respect to the specific function of IP security (see, IP Security function 144 of FIG. 3 of Anand), Anand does not suggest moving such functionality into the operating system kernel, but instead suggests

moving such functionality into the network interface card (NIC) 100 hardware. (*See, e.g.*, Anand, col. 11, lines 2 - 6 and col. 12, lines 15 - 19).

In response to this argument, the Final Action appears to state that the Specification does not support a recitation directed to a security offload component that is in an operating system kernel. (Final Action, pages 6 and 7). Applicants respectfully disagree. As reproduced above, the first sentence of the "Description Of Preferred Embodiments" provides support for security processing being moved into the operating system kernel such as, for example, into the TCP layer. Applicants submit that it is common usage to call a piece of software a "component" or "module." Thus, Claim 1 recites this aspect of the present invention as **"providing a security offload component in an operating system kernel** which performs security processing." The Final Action proceeds to quote several passages from the Specification that describe a "security offload component" or "encryption component" as being a hardware device. (Final Action, pages 7 - 9). Applicants agree that the Specification describes several embodiments in which a security offload component is implemented as a hardware device. But as highlighted above, the Specification also describes numerous embodiments in which security processing is offloaded from the application into the operating system kernel, such as the TCP layer, as discussed with reference to FIGS. 2A through 2E.

Applicants further submit that Anand inherently does not disclose or suggest the recitation "providing control functions in the operating system kernel for directing operation of the security offload component" of Claim 1 and analogous recitations of Claims 12 and 13 as Anand describes moving the security functionality into a hardware component, such as a NIC, to relieve the CPU, which executes the operating system software, of that task. (*See, e.g.*, above discussion and Anand, col. 3, lines 18 - 22).

Therefore, Applicants respectfully request that the present application be reviewed and the rejection of independent Claims 1, 12, and 13 be reversed by the appeal conference prior to the filing of an appeal brief.

Various Dependent Claims are Separately Patentable

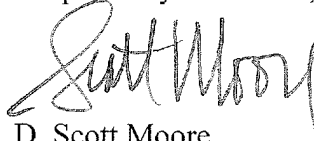
As discussed above, dependent Claims 8 - 11 are patentable as least as they depend from patentable independent Claim 1. Applicants further submit, however, that these dependent

claims are separately patentable for at least the reasons discussed hereafter.

Dependent Claims 8 - 11 stand rejected under 35 U.S.C. §102(e) as being anticipated by Anand. Each of dependent Claims 8 - 10 provides additional details with respect to what is provided to the security offload component for use in securing communications. Dependent Claim 11 and new Claim 17 provide additional detail with respect to how outbound data is sent from the security offload component. As discussed above, Anand does not disclose or suggest providing a security offload component as part of the operating system kernel. While Applicants acknowledge that Anand does suggest that certain security functionality may be provided by a hardware peripheral (see, e.g., Anand, col. 2, lines 55 - 60), Applicants submit that Anand does not appear to disclose any of the specific details of dependent Claims 8 - 10, 11, and 17. Accordingly, for at least the foregoing reasons, Applicants respectfully submit that dependent Claims 8 - 11 and 17 are separately patentable over Anand.

Accordingly, for at least the additional reasons discussed above, Anand does not disclose the recitations of dependent Claims 8 - 11 and 17. Therefore, Applicants respectfully request that the present application be reviewed and the rejection of dependent Claims 8 - 11 and 17 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "D. Scott Moore", is written over a horizontal line.

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